BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION

KATHERINE D. HATCHER	)	
Claimant	)	
	)	
VS.	)	
	)	
BURGER KING	)	
Respondent	)	Docket No. 1,018,049
	)	
AND	)	
	)	
CONTINENTAL WESTERN INS. CO.	)	
Insurance Carrier	)	

ORDER

Respondent and its insurance carrier request review of the January 12, 2005 preliminary hearing Order for Compensation entered by Administrative Law Judge Brad E. Avery.

ISSUES

The Administrative Law Judge (ALJ) found the claimant suffered accidental injury arising out of and in the course of employment. Accordingly, the ALJ ordered the respondent to provide claimant temporary total disability compensation and medical treatment.

The respondent requests review of whether the claimant's accidental injury arose out of and in the course of employment. Respondent argues claimant had left her employment and worked for two subsequent employers before a doctor restricted her from working. As a result, respondent argues claimant's date of accident for her alleged repetitive injuries would be after she had left respondent's employ and while she worked for a subsequent employer.

Conversely, claimant argues she left work for respondent because it was unwilling to accommodate her medical restrictions and her subsequent part-time employment for two

employers did not aggravate the injuries she had suffered while working for respondent. Consequently, claimant argues the ALJ's Order for Compensation should be affirmed.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Having reviewed the whole evidentiary record filed herein, the Board makes the following findings of fact and conclusions of law:

The claimant began working for respondent in November 2001. By April 2004, claimant was employed as an assistant manager working in excess of 60 hours a week. On April 5, 2004, claimant initially noticed an onset of pain and numbness in her wrists and fingers. She had just finished unloading stock and was changing the grease in the fry machines. She notified the manager and was told if she needed medical treatment to let him know. As claimant continued working, the pain in her hands worsened.

Claimant requested and was sent for medical treatment at Prompt Care on April 19, 2004. She was advised to do hand exercises, prescribed medication and provided splints to wear. As claimant continued working her condition did not improve. On May 3, 2004, claimant was placed on light duty with no lifting greater than 15 pounds. Over the course of continued appointments at Prompt Care, the claimant was prescribed light-duty work consisting of lifting restrictions which were reduced to 10 pounds by July 2004. At that time an EMG was recommended.

Claimant quit working for respondent because of the ongoing pain in her hands and the fact that her light-duty restrictions provided by the Prompt Care physician were not being accommodated.

After claimant left work with respondent she worked for a temporary agency. She was placed in a job with Lawrence Paper Company working three or four days a week, between five to eight hours a day for three weeks. Claimant also worked for an auctioneer for two weeks. Claimant testified these jobs did not cause an increase in her hand symptoms.

An EMG was finally performed on October 26, 2004, and confirmed bilateral moderately severe median nerve compression at the wrist. Claimant was then restricted from working by her physician.

Respondent relies upon the principles set forth in *Treaster*[1], and argues that because claimant was not taken off work until after she had worked for two subsequent employers the date of accident for her repetitive injuries should be the date she was finally restricted from working.

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[1] *Treaster v. Dillon Companies, Inc.*, 267 Kan. 610, 987 P.2d 325 (1999).

This argument ignores claimant's uncontroverted testimony that she left her employment with respondent because of her hand complaints and its failure to accommodate the light-duty restrictions placed upon her at that time. And that her subsequent part-time employments neither aggravated, intensified nor worsened her condition.

In *Treaster*, the Kansas Supreme Court held that the appropriate date of accident for injuries caused by repetitive use or mini-traumas is the last date that a worker (1) performs services or work for an employer or (2) is unable to continue a particular job and moves to an accommodated position. In *Treaster*, the Kansas Supreme Court also approved the principles set forth in *Berry*[2], in which the Court of Appeals held that the date of accident for a repetitive trauma injury is the last day worked when the worker leaves work because of the injury.

In this instance, the claimant has met her burden of proof to establish that she suffered accidental injuries as a result of her work for respondent and that she left her work with respondent because of her injury. Moreover, claimant's testimony establishes that her subsequent part-time work activities did not aggravate, accelerate or intensify her bilateral carpal tunnel condition. The Board affirms the ALJ's Order For Compensation.

WHEREFORE, it is the finding of the Board that the Order for Compensation of Administrative Law Judge Brad E. Avery dated January 12, 2005, is affirmed.

IT IS SO ORDERED.

Dated this _____ day of April 2005.

_____
BOARD MEMBER

c: Sally G. Kelsey, Attorney for Claimant
James B. Biggs, Attorney for Respondent and its Insurance Carrier
Brad E. Avery, Administrative Law Judge
Paula S. Greathouse, Workers Compensation Director

[2] *Berry v. Boeing Military Airplanes*, 20 Kan. App. 2d 220, 885 P.2d 1261 (1994).